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July 25, 2022

The Honorable John R. Adams
United States District Court for the Northern District of Ohio
2 South Main Street, Suite 510
Akron, Ohio 44308

Re: Miller v. Anderson et al., No. 20-cv-1743

Dear Judge Adams:

Wollmuth Maher & Deutsch LLP (“WMD” or the “Firm”) writes in response to the Court’s solicitation for counsel interested in prosecuting the claims in the above-referenced action. (ECF No. 332). As set forth below, the Firm routinely handles complex commercial matters, is a uniquely qualified applicant to best serve the shareholders’ interests here, and is interested in the opportunity to litigate this case to resolution.

While the Court has taken the unique step of seeking new counsel in this action, we recognize that in shareholder derivative actions the “decision regarding appointment of lead counsel is within the discretion of the court.” *In re Gas Nat., Inc.*, 2014 U.S. Dist. LEXIS 191536, at *4-5 (N.D. Ohio Mar. 7, 2014). We understand that in selecting counsel, courts are traditionally guided by “who ‘will best serve the interest of the plaintiffs’”, *id.* (citation omitted), and consider, among other things, the “competence of counsel,” *id.*, and “access to resources necessary to prosecute the claims at issue.” *In re Wendy’s Co. S’holder Derivative Action*, 2018 U.S. Dist. LEXIS 211957, at *6 (S.D. Ohio Dec. 17, 2018) (citation omitted); *see also* Fed. R. Civ. P. 23(g)(1)(A)(i)-(iv).

This is a complex shareholder securities derivative action alleging that FirstEnergy officers or directors “breached their fiduciary duties to the Company, were unjustly enriched, wasted corporate assets, and committed violations of Section 14(a) of the Securities Exchange Act of 1934. . . .” *See* ECF No. 31 at 1. It will require expertise and substantial resources to effectively litigate. The Firm has monitored this case and other proceedings related to FirstEnergy’s role in the House Bill 6 scandal, is familiar with the facts and issues involved, and has the legal and industry expertise as well as the professional reputation and credibility necessary to prosecute this action vigorously and effectively. In addition, the Firm has a proven track record of successfully litigating complex securities cases on behalf of an array of clients including domestic and international companies, municipalities, and institutional investors.

The Firm's Extensive Commercial Litigation Experience and Legal Knowledge

WMD is a highly regarded New York-based litigation firm representing plaintiffs and defendants. Our Firm includes approximately 60 attorneys, many of whom began their careers at international law firms or have served as federal or state prosecutors.¹ WMD's attorneys who will lead the charge in this matter have decades of experience litigating complex commercial and securities actions. In addition, WMD's reputation in the legal community provides the credibility required to successfully litigate against the nation's top defense-focused law firms. The Firm's attorneys have also developed a reputation for being collegial lawyers who work cooperatively and respectfully with both courts and opposing counsel.

WMD has a successful track record in all forms of commercial litigation, including especially matters concerning securities, corporate governance, and derivative and class action litigation. While our Firm has significant experience in individual actions, we also are deeply experienced in handling financial-based and other securities class actions as sole or lead class counsel, involving similar claims to those present here.² The Firm's cases involve many sophisticated legal and factual issues that require a keen understanding of how various financial markets operate in order to effectively prosecute the unlawful conduct. The Firm's attorneys have acquired extensive knowledge of the applicable law and have honed their skills to allow them to litigate against defendants effectively and efficiently on similar issues to those that may arise in this action. Indeed, WMD has developed expertise in investigating, developing, and litigating securities and breach of fiduciary duty claims in complex cases similar to this one, which will greatly benefit FirstEnergy and its shareholders.

Of note, the Firm's successes include the prosecution of securities and common law fraud claims in Ohio courts. *W. & S. Life Ins. Co. v. JPMorgan Chase Bank, N.A.*, No. 11-cv-495 (S.D. Ohio), was one of nearly a dozen Ohio cases in which the Firm represented The Western & Southern Life Insurance Company and its affiliates ("Western & Southern") against the sponsors and underwriters of residential mortgage-backed securities. In *W. & S. Life Ins. Co. v. JPMorgan Chase Bank, N.A.*, the Firm also litigated Ohio Corrupt Activities Act claims. There, the Firm defeated a motion to dismiss and negotiated an advantageous settlement for the investors that earned the Court's full approval. For a firm based in New York, WMD has unique experience with Ohio litigation and can draw on those experiences as necessary here.

FirstEnergy's shareholders are typical of many of the Firm's clients, which include some of the largest institutional investors in the world, such as AIG, Berkshire Hathaway, and Commerzbank, and government entities such as the FDIC.³ The Firm also frequently represents

¹ This applies to the attorneys who will lead this matter, including David H. Wollmuth (Davis Polk) and R. Scott Thompson (Davis Polk/federal prosecutor).

² For example, in *Touchstone Strategic Trust et al. v. Gen. Elec. Co. et al.*, No. 19-cv-1876 (JMF), the Firm represents investment funds and other institutional investors against GE and its former CEO and CFO. In addition to asserting fraud claims arising under the Securities Exchange Act of 1934 stemming from the historic stock price collapse of GE, the plaintiffs are pursuing claims under the Ohio Securities Act and seeking rescission of approximately \$100 million of GE common shares.

³ In the interest of transparency and based on a review of publicly available data, the Firm has previously both represented and been adverse to several FirstEnergy shareholders, none of whom are named as parties in this action.

clients involved in corporate governance disputes, including breach of fiduciary duty and waste claims. The Firm is regularly involved in novel and important complex litigations.⁴ WMD is unique among potential lead counsel applicants because it has significant experience representing *both* plaintiffs and defendants in complex securities litigations.

In short, the Firm is well equipped to serve as shareholders' counsel in this action.

Committing Resources to Represent the Shareholders

The lead attorneys committed to this matter are Scott Thompson, head of WMD's trial practice, and David Wollmuth, WMD's managing partner. Between them they have over 60 years' experience (including substantial experience in sophisticated financial litigation and white-collar crime), and have handled some of the leading financial cases of our time, including in Ohio. We believe they will be an ideal team to lead the prosecution of this case.

Scott Thompson has more than 35 years of litigation experience, much of it in the white-collar area. After practicing in the white-collar area at Davis Polk & Wardwell, he spent four years as an Assistant United States Attorney prosecuting organized crime and complex financial crimes. He then spent the next 20 years practicing largely in the white-collar area, including defending criminal cases and conducting internal investigations for clients such as AT&T, Lucent Technologies, and Cerberus Capital Management. He defended clients in investigations involving the Foreign Corrupt Practices Act, and advised clients on how to create and deploy effective FCPA compliance programs. He has been lead trial counsel in dozens of cases across a broad spectrum of civil and criminal issues.

David Wollmuth is a leading financial litigator in New York, and he founded WMD (along with two other partners), twenty-five years ago after clerking in federal court and working at Davis Polk & Wardwell for many years. In his career, he has secured well over \$1 billion in settlements for his clients. He has served Ohio's Western & Southern in sophisticated financial litigations for approximately twenty years. Mr. Wollmuth's representation of Western & Southern began with successfully representing Western & Southern in connection with the Enron debacle in the early 2000s. Among other references (which are available upon request), Mr. Wollmuth invites the Court to contact Western & Southern's current general counsel, Jonathan Niemeyer, regarding Mr. Wollmuth and WMD (Mr. Niemeyer's email and telephone will be provided upon request).

Beyond Messrs. Thompson and Wollmuth, WMD is ready to commit the required time and resources essential to effectively prosecute the claims on behalf of FirstEnergy and its

(Firm clients who are FirstEnergy shareholders include AIG and For Washington Investment Advisors; shareholders the Firm has been adverse to include Bank of America, Bank of New York Mellon, Deutsche Bank AG, Goldman Sachs, HSBC, JPMorgan, Morgan Stanley, Nuveen, US Bank, and Wells Fargo). These prior representations will in no way hinder the Firm's ability to advocate on behalf of the FirstEnergy shareholders. On the contrary, the Firm's extensive experience in similar matters with the kinds of institutions involved will greatly advantage the shareholders in their litigation of these claims. And should a conflict arise, the Firm will promptly notify the Court and take the necessary steps to address it.

⁴ One example is the Firm's current representation of LTL Management, LLC in its Chapter 11 bankruptcy, *In re LTL Management, LLC*, No. 21-30589 (MBK) (Bankr. NJ. Feb. 25, 2022). Additional illustrative examples of the Firm's representations, as well as biographies of the Firm's lead attorneys, can be found in Exhibit A, enclosed herewith.

shareholders. The Firm will closely manage the time spent and the costs incurred in litigating this matter to ensure the case is being litigated efficiently. WMD recognizes that it has a duty to manage the case in an efficient and cost-effective manner to ultimately maximize the potential recovery.

WMD's Familiarity with the Claims in this Litigation

The Firm has monitored the developments in this case and the various related cases in other courts, as well as the regulatory proceedings that arose from the shocking events of the House Bill 6 bribery scandal. The Firm recognizes the severity of the allegations in the amended complaint here and the impact of the conduct not only on FirstEnergy shareholders, but also on the citizens of Ohio. This action fits the profile of the type of case the Firm typically handles, and as with all its cases, the Firm will seek the most favorable outcome possible for FirstEnergy shareholders, pursue utmost transparency for the benefit of shareholders and citizens alike, and seek full approval from this Court of any potential resolution, if one is reached.

Accordingly, for the reasons set forth herein in response to the Court's notice (ECF No. 332), the Firm states its interest in substituting as shareholders' counsel in this action. We appreciate the Court's attention to this matter and will be available at the Court's convenience.

Respectfully submitted,

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Enclosure